

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3505 of 1986

Date of decision: 27-01-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KARTIKUMAR S SHUKLA

Versus

STATE OF GUJARAT

Appearance:

Mr. P. R. Joshi for Petitioners

Ms. P. S. Parmar for Respondent No. 1

None present for Respondent No. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13

CORAM : MR.JUSTICE S.K.KESHOTE

ORAL JUDGEMENT

The petitioners are purchasers of the land of block No. 142 and 157 of village Dascroi, District Ahmedabad, from respondents No.2 to 13. Non-agricultural permission for the land in dispute was obtained by respondents No.2 to 13 under order dated 1-1-1983 made by the Taluka Development Officer, Dascroi. Respondents No.2 to 13 have made 22 plots of the said land and sold the said land to the petitioners. The Secretary, Revenue Department (Appeal), Government of Gujarat, Ahmedabad, served show cause notice dated 4-7-1985 to respondents No.2 to 6 as to why the nonagricultural permission granted for the land in dispute should not be cancelled on the ground mentioned therein. Respondents No.2 to 6 submitted their explanation to the show cause notice and given out therein that the land was sold to the petitioners, and as such they are left with no interest in the matter. It is not in dispute that these lands were sold, by respondents No.2 to 13, to the petitioners by registered sale deed and the names of the petitioners are also entered in the record of rights maintained under the provisions of the Land Revenue Code and the rules framed thereunder. The petitioners have been paying land revenue of the land in question after converting the same as nonagricultural land. The petitioners were claimed to be necessary parties to the proceedings. Special Secretary (Appeal), by his order dated 15-11-1985 set aside the order dated 1-1-1983 of the Taluka Development Officer and hence this special civil application by the petitioners before this court.

2. Learned counsel for the petitioners contended that the notice for cancellation of nonagricultural permission was given after 2-1/2 years. The delay in giving notice is vital to the action taken by the Special Secretary. It has next been contended that the land in dispute has been sold by respondents No.2 to 13 to the petitioners. Thus the petitioners are the interested persons in the land in question and as such before passing the order dated 15-11-1985, which adversely affected their rights, the Special Secretary should have given opportunity of hearing to them. Further averments have been made that the construction in the land has already been started, which has been made at a distance of 110 feet from the railway land. On the other hand learned counsel for the respondents supported the order passed by the Special Secretary. She has further made

reference to the Government Resolution dated 25th March, 1981 and contended that the Taluka Development Officer has granted nonagricultural permission in the present case in favour of respondents No.2 to 13 without complying with the aforesaid resolution.

3. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. Have gone through the order which has been passed by the State Government under section 24 of the Land Revenue Code. After going through the order of the State Government, I am *prima facie* satisfied that the Taluka Development Officer has not strictly complied with the requirement of resolution dated 25th March, 1981. But merely because the order has been passed without making compliance of the said resolution, how far the order of the Special Secretary, cancelling the order of the Taluka Development Officer, is correct is the question which needs consideration of this Court.

4. Nonagricultural permission could have been given only by the competent authority, after complying with the requirements of resolution dated 25th March, 1981. There is no dispute on this question. The facts of the case are that the land has been sub-divided after grant of nonagricultural permission. The petitioners have purchased the plots, and some construction has also been made, as per their case. The revisional authority should have either considered the merits of the matter, whether nonagricultural permission could be granted in the present case, or it could have sent the matter to the competent authority for deciding the matter on merits. The petitioners have purchased the land by registered sale deed and there would not have been any difficulty in case these persons could have been given an opportunity of hearing. These are the real persons affected by the order passed by the Special Secretary. Transferrers of the land no more have any interest in the land. They have given reply that the lands have been sold to the petitioners by registered sale deed, and as such at that point of time the Special Secretary could have called upon the petitioners and afforded them an opportunity of hearing. The proper course would have been to examine the matter on merits and to find out whether nonagricultural permission could be granted or not in the present case.

5. Though at one stage I thought of remanding the matter back to the Special Secretary for deciding the matter afresh, after giving an opportunity of hearing to the petitioners, as stated earlier, but as the Special

Secretary has only restricted his judgment on the ground that before passing the order dated 1-1-1983 the Taluka Development Officer has not complied with the requirement of resolution dated 25th March, 1981 and he himself has not decided the matter on merits, I consider it proper to send this matter to the District Development Officer, Ahmedabad, for deciding the matter for grant of N.A. permission on merits in accordance with law. While deciding the matter it is in the larger interest of the petitioners that they may be given an opportunity of hearing. The District Development Officer, Ahmedabad, further may give notice to the Railway Authorities as the land is near to the railway line, as well as to the Municipal Corporation, so that all the persons affected from grant of nonagricultural permission to the petitioners may also be able to submit their objections, if any. After hearing the parties the matter may be decided on merits in accordance with law. It is also to be considered whether the whole land can be permitted to be converted into nonagricultural purpose and if not possible, then what course can be adopted. In case any order is passed adverse to the petitioners, then they may be given copy of the same, sending the same by registered A.D. post to them.

6. In the result the writ petition stands disposed of in the aforesaid terms. The order annexure-B dated 15th November, 1985 made by the Special Secretary (Appeals), Revenue Department, Ahmedabad, is quashed and set aside. The matter is remanded to the District Development Officer for deciding afresh as directed above. No order as to costs.

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